

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL A. WALTON,

Plaintiff,

vs.

JOHN DOE a fictitious name, true name unknown,
and LINE TRUCKING CORP.,

Defendants.

Action No.

**NOTICE
OF REMOVAL**

**Removed from the Supreme Court
of New York, County of Bronx
(Civil Action No. 811387/2022E)
(Diversity Jurisdiction)**

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1332, 1441, and 1446, and Local Civ. Rules, Defendant LINE TRUCKING CORP. (“Line Trucking”), by and through its undersigned counsel, hereby files this Notice of Removal and removes the above-entitled civil action from the Supreme Court of the State of New York, Bronx County, Index No. 811387/2022E, to the United States District Court for the Southern District of New York. In support of this Notice of Removal, Line Trucking states as follows:

BACKGROUND AND PROCEDURAL FACTS

1. On August 4, 2022, Plaintiff, Michael A. Walton, electronically filed a Verified Complaint against Defendants Line Trucking and John Doe, a fictitious name, in the Supreme Court of the State of New York, Bronx County (“the State Action”) under Index No. 811387/2022E. Pursuant to 28 U.S.C. § 1446(a), a copy of a Summons and the Verified Complaint in the State Action are attached as **Exhibit A**.

GROUND FOR REMOVAL

2. Plaintiff purchased the index number and electronically filed the Complaint with New York State Courts Electronic Filing system on August 4, 2022. *Id.* This Notice of Removal is filed within 30 days of the commencement of the State Action, and is therefore timely under 28 U.S.C. § 1446(b).

3. This action is removable to this Court pursuant to 28 U.S.C. §1441, which authorizes removal of any civil action brought in a state court in which the United States District Court for that district has original jurisdiction. The United States District Court for the Southern District of New York, is the federal judicial district and division embracing the Bronx County, the county in which the incident that is the subject of the State Action is alleged to have occurred, and in which county the State Action was filed. **Exhibit A**, ¶ 24.

4. Removal to this District and Judicial District is therefore proper pursuant to 28 U.S.C. §§112(c) and 1441(a).

DIVERSITY JURISDICTION

5. This Court has original jurisdiction based on diversity jurisdiction under 28 U.S.C. §1332(a) because Plaintiff and Defendant Line Trucking are citizens of different states and the amount in controversy is believed to exceed \$75,000.00, exclusive of interest and costs.

6. The Verified Complaint filed in the State Action alleges that Plaintiff is a resident of Monroe County, Commonwealth of Pennsylvania. *Id.*, ¶ 1.

7. Defendant Line Trucking is a Florida corporation with its principal place of business in Florida.

8. Defendant is informed and believes that the amount in controversy is likely to exceed \$75,000. *Id.*, ¶ 33.

9. This matter concerns a motor vehicle collision alleged by Plaintiff to have occurred on June 24, 2021. Plaintiff alleges that as a result of the collision, he sustained a herniation of his cervical spine, repaired by fusion surgery; herniation of his lumbar spine, repaired surgically by a discectomy; a tear of the medial meniscus of his right knee; a tear of the bursa of his right shoulder, causing tendinitis; and injuries to his left knee and shoulder, resulting in tendinitis.

10. Given the alleged injuries and treatment received to date, Plaintiff's damages can be reasonably inferred to exceed the 28 U.S.C. § 1332(a) requirement of a minimum \$75,000 amount in controversy, exclusive of costs and fees. *See, Scottsdale Ins. Co. v. Acceptance Indem. Ins. Co.*, No. 19-CV-7294 (RA) (S.D.N.Y. Dec. 3, 2019) (finding reasonable probability that amount in controversy exceeded \$75,000 where plaintiff alleged injuries to the cervical spine, lumbar spine, left ankle and left shoulder); *see also Ford-Smith v. HMS Host Corp.*, 1:19-CV-0947 (GTS/ML) (N.D.N.Y. Mar. 16, 2020).

11. Generally, the face of the complaint is a good faith representation of the actual amount in controversy, and a party opposing diversity jurisdiction must show to a legal certainty that the amount recoverable does not meet the jurisdictional amount. *Id.* at 397. The Second Circuit has stated that even where the allegations "leave grave doubt about the likelihood of a recovery of the requisite amount, dismissal is not warranted." *Id.* (quoting, *inter alia, Zacharia v. Harbor Island Spa, Inc.*, 684 F.2d 199, 202 (2d Cir.1982)).

12. Defendants respectfully submit that this court has jurisdiction over this matter by reason of the diverse citizenship of plaintiff, on the one hand, and defendant Line Trucking, on the other.

13. Removal of this case to the United States District Court for the Southern District of New York is appropriate because Bronx County, New York (the location of the alleged motor vehicle collision) is within the designated jurisdiction of the Court.

14. Defendants will promptly serve a copy of this Notice of Removal on Plaintiff's counsel, and will file a copy of this Notice of Removal with the Clerk of the Supreme Court of New York, County of Bronx, pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendant LINE TRUCKING CORP., INC. respectfully requests that Plaintiff's action be removed from the Supreme Court of New York, County of Bronx, to the United States District Court for the Southern District of New York.

Dated: September 6, 2022
New York, New York

Respectfully submitted,

KENNEDYS CMK LLP

_____/s/_____
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LINE TRUCKING CORP.

With Notice To:

County Clerk
Supreme Court of New York, County of Bronx
851 Grand Concourse
Bronx, New York 10451

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 6, 2022, a true and correct copy of the within NOTICE OF REMOVAL was filed with the Clerk of the Court by using the ECF system. A true and correct copy this filing will be mailed to the following recipients via First Class Mail:

TO: County Clerk
Supreme Court of New York, County of Bronx
851 Grand Concourse
Bronx, New York 10451

Michael M. Szechter, Esq.
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Rosedale, New York 11422

Dated: September 6, 2022

/s/ Nitin Sain
Nitin Sain, Esq.